

HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 5426 of 2007

DATED: 16-03-2007

Between:

Boda Venkateshwarlu

...Petitioner

and

The District Collector,
Prakasam District (CS),
Ongole and others.

...Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 5426 of 2007

ORAL ORDER:

In 2002, the petitioner was granted a permanent authorization to run a Fair Price Shop in Chapalamadugu Village, Pullalacheruvu Mandal, Prakasam District. On 1-1-2005 the petitioner applied for a six month leave to the 3rd respondent, from 1-1-2005 to 30-6-2005 on the ground of ill health. By an order dated 11-1-2005 the 3rd respondent sanctioned leave to the petitioner and granted temporary authorization to the 5th respondent to run the Chapalamadugu shop. The petitioner submitted a "joining report" on 20-6-2005 stating that he had regained his health, along with a Medical Certificate in support thereof.

The 3rd respondent referred the Medical Certificate to the District Medical Officer for verification and during its pendency, by an order dated 7-12-2005 cancelled the petitioner's authorization. Aggrieved thereby the petitioner preferred an appeal to the 2nd respondent. The 2nd respondent by an order dated 22-7-2006 allowed the appeal. The 2nd respondent noted that though leave was granted without any provision in that behalf under the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short 'the Control order') the 3rd respondent's order of cancellation of authorization was irregular, as the order was passed during the pendency of verification of the Medical Certificate by the District Medical Officer to whom the 3rd respondent had referred the petitioner's Medical Certificate.

Accordingly and on the aforesaid reasons, the appeal was allowed by the 2nd respondent. Thereafter, the petitioner's authorization was restored and he continued to function.

Aggrieved by the 2nd respondent's appellate order, the 5th respondent preferred a revision to the 1st respondent. By the impugned order, the 1st respondent allowed the revision. By his order dated 10-2-2007 the 1st respondent held, to the extent relevant and material for the purposes of this writ petition, that the petitioner had applied for six months leave during 1-1-2005 to 30-6-2005 indicating that he had no objection for appointment of another person on temporary basis during his leave. The 3rd respondent appointing authority had granted leave to the petitioner without authority as there was no provision in the Control order enabling an application or grant of leave. Though the *locus standi* of the 5th respondent-revision petitioner was challenged by the petitioner herein, the 1st respondent was of the view that in the entirety of the facts and circumstances, a case was made out for notification of the vacancy of the Fair Price Shop for fresh grant of authorization. Accordingly, the 1st respondent, exercising revisional power directed the 3rd respondent to notify the Fair Price Shop of Chapalamadugu Village afresh and to appoint a dealer as per the extant guidelines on this aspect.

In this writ petition, the 5th respondent's *locus standi* to prefer a revision petition is impeached. Reliance is placed on two Judgments of a learned Single Judge of this Court reported in ***Alapati Soma Sekhar v. Collector, Krishna District***^[1] and ***B.Bala Seshanna v. District Collector, Kurnool District***^[2]. These decisions have taken the view following a division bench judgment dated 19-3-1997 in W.A.No.1146 of 1995 and batch, that a temporary Fair Price Shop Dealer appointed as such on account of the interim suspension of the regular dealership was not an aggrieved person entitled to prefer a

revision under Clause 21 of the Control Order, 2001.

According to the learned Government Pleader for Civil Supplies, a Division Bench of this Court in ***B.Maheswaramma v. M.R.Ramasubbamma***^[3] has taken the view that even a temporary fair price shop dealer is a person aggrieved and has thus the *locus standi*, to maintain the revision under clause 21 of the Control order.

Even without going into the issue whether the 5th respondent has *locus standi* to maintain a revision before the 1st respondent, it requires to be considered that the Control order does incorporate any provision for application for grant of leave by a permanent authorisee of a Fair Price Shop. Authorisation of a Fair Price Shop is not in the nature of public employment which has the several perquisites appended to public employment, like, casual or earned leave, medical leave and the like. Merely because the petitioner had submitted an application and had also gratuitously suggested that the 3rd respondent was at liberty to appoint any other person during the period he was not running the shop, it was not open to the 3rd respondent to have exercised an authority which was not available under the Control order and grant leave. Leaving the shop unattended in the absence of any provision for grant of leave for six long months is an eventuality which calls for treatment of the authorization as surrendered or abandoned and for a permanent arrangement to be made or to treat it as a vacancy for an initial temporary authorization and thereafter regular notification for grant of a permanent authorization. But to keep the shop reserved for the petitioner's convenience to return after a sabbatical appears inconsistent with the scheme of grant of authorizations, under the provisions of the Control order. On this analysis the ultimate decision of the 1st respondent to declare that a vacancy is deemed to have arisen in respect of the shop in question and directing the 3rd respondent to issue a notification calling for applications for grant of authorization, suffers from no substantive error

warranting interference in exercise of the discretionary jurisdiction of mandamus under Article 226 of the Constitution. This court discerns no revisable error warranting interference.

There are no merits in the writ petition and the same is accordingly dismissed at the stage of admission, after hearing the learned Government Pleader for Civil Supplies also. There shall be no order as to costs.

GODA RAGHURAM, J

16-03-2007

Note:

Copy as soon as possible

/B.O/

GRR

[\[1\]](#) 2003 (3) ALD 62

[\[2\]](#) 2005 (5) ALD 727

[\[3\]](#) 1995 (3) ALD 461 (D.B)